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No.

IN THE

Supreme Court of the United States

STANLEY LAFLAMME,

Petitioner

V.

ESSEX JUNCTION SCHOOL DISTRICT

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Vermont

PETITION FOR WRIT OF CERTIORARI

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59pp

QUESTION PRESENTED

May a government body, without due process of law, intentionally and officially censure an elected member in retaliation for expressing his views at public meetings?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by Rule 14.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

Stanley LaFlamme, Plaintiff/Appellee;

Essex Junction School District, Defendant/Appellant;

Edwin L. Hobson, Attorney for the Plaintiff/Appellee;

Thomas M. Higgins and Douglas C. Pierson, Attorneys for the Defendant/Appellant

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OPINIONS

The opinion of the Vermont Supreme Court is *Stanley LaFlamme v. Essex Junction School District and Essex Junction Prudential Committee*, 750 A.2d 993, ___ Vt. ___, 2000 Vt. LEXIS 4 (opinion filed January 21, 2000); Motion for Reargument denied May 2, 2000.

JURISDICTION

This Court has jurisdiction to review the decision of the Vermont Supreme Court entered on January 21, 2000, under 28 U.S.C. §1257(a), by a Writ of Certiorari, because a right is specially set up or claimed under the Constitution and statutes of the United States after a decision by the highest court of the State of Vermont. The Petitioner's Motion for Reargument was denied May 2, 2000.

STATUTORY AND CONSTITUTIONAL PROVISIONS

Constitution of the United States of America

Amendment One

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment Fourteen

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or

causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A jury in the Chittenden Superior Court in Burlington, Vermont found that Defendant maliciously deprived Petitioner of due process of law by an official censure, in violation of 42 U.S.C. §1983. The evidence established that the Defendant censured the Petitioner in direct consequence of his speaking at a select board meeting. The Petitioner was an elected member of the Board.

The Vermont Supreme Court reversed the judgment, holding that Respondent was entitled to judgment as a matter of law because the censure did not deprive Petitioner of a protected "liberty" or "property" interest. It held that even where the Petitioner lost his ability to perform his office adequately, was effectively forced to resign, and could not win another elected office that no liberty or property interest was involved. Because the Petitioner had lost a claim that the censure prevented future speech, the Court refused to consider the uncontroverted evidence that the censure was in direct retaliation for Petitioner's speaking in public forums on public issues. The Court therefore examined only the effect after the censure on the Petitioner's property and associational interests, ruling that the effect was on his reputation only.

The Petitioner had run for the school board as a reform candidate, opposing the school's administra-

tion. After his election, he encountered continuing hostility from the administration and other school board members to his efforts to see that Board business was conducted publicly and to obtain accurate financial information. The District's Superintendent warned Petitioner against engaging in public debate on Board issues.[1] He was advised to "cool [his] jets" because he was "pissing off people at the front office and they [didn't] like the way [he was] digging into things."[2] He was well prepared and articulate at Board meetings.[3] However, the other members of the Board found him strident.

Other members took the position that once the Board had taken any action—even approving a draft budget or approving the "concept"[4] of a school district

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[1] References to the record are included in the event that Defendant raises a factual question. Transcript of trial (hereinafter "Tr."). September 2, 1997, p. 72, l. 2 – p. p. 73, l. 4; Superintendent Harrison admitted the conversation warning the Petitioner but claimed that the conversation was being misconstrued, that he "was trying to do him a favor." Tr. September 4, 1997, p. 121, ll. 17-18.

[2] Testimony of Stanley LaFlamme, Tr. September 2, 1997, p. 63, l. 11- p. 64, l. 4.

[3] Testimony of George Boucher, Essex Village Trustee for twenty years, Tr. September 3, 1997, p. 8, l. 1 to p. 10 l. 6. Testimony of Gail Rowell, Tr. September 3, 1997, p. 53, l. 22 to p. 54, l. 18; Testimony of Steve Bergeron, Tr. September 3, 1997, p. 27 l. 14 to p. 29, l. 7.

[4] Petitioner's Exhibit 6 (minutes of meeting of May 8,

merger—that Petitioner had to support the action and could no longer speak in opposition.[5] Two events precipitated the Petitioner's official censure. In March 1995, the Petitioner spoke publicly in opposition to a draft school budget that was supported by the other members of the Board, angering the other members of the Board. Then on May 23, 1995, he attended a meeting of the local village select board. After hearing a presentation from a citizen, the select board decided to oppose a district merger that was supported by a majority of the School Board.[6] At the meeting, Petitioner made statements that may have encouraged the select board to take a position on the issue.

On May 30, 1995, the School Board held an emergency meeting without the Petitioner present. The Board viewed a videotape of the May 23rd select board meeting particularly in respect to his role at the meeting. The Board shortly thereafter adjourned into

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1995); Tr. September 2, 1997, p. 99, l. 4 – l. 19; Tr. September 4, 1997, p. 64 l. 17 - l. 21.

[5] The VSBA Code of Ethics requires board members to "abide by Board decisions regardless of how they voted." Defendant's Exhibit K. The Board interpreted this provision as giving it a right to prevent the Petitioner from speaking in support of the Board's positions. Testimony of James B. Riley, Tr. September 3, 1997, p. 86, l. 7 – p. 91, l. 14.

[6] The meeting is in evidence on videotape. Petitioner's Exhibit 19.

executive session and decided to issue a public censure against him.

The connection between the viewing of the videotape of the Petitioner at the select board meeting and the censure motion was not disputed at trial. The evidence of the Board's retaliatory motive was admitted at trial without objection and without limitation.[7] The board member who moved for the censure observed, "[t]he [select board] meeting and his performance and it just kind of made it clear that the behavior wasn't going to change."[8] Anyone who wanted to add other charges to the censure were told to contact the Board chair.[9] The Board then secretly drafted six false ethics charges.

The Board ignored the statutory procedures requiring notice and opportunity to be heard.[10] The

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[7] Vermont Rules of Evidence 105 & 103 are similar to the comparable Federal Rules, and require a request for a limiting instruction if the evidence is not to go to all issues in the case..

[8] Testimony of James B. Riley, September 3, 1997, p. 105, l. 18-20.

[9] Tr. September 3, 1997, p. 129 l. 1. 3 to p. 130 l. 1. The fact that the censure was approved just based on the Petitioner's attendance at the Village Trustee's meeting is directly set out in the Executive Committee minutes. See Appendix.

[10] 16 V.S.A. §554(b) requires Roberts Rules of Order to be followed. Robert's Rules provide for very clear instructions on disciplinary procedures, all of the

Board scheduled the public censure agenda item as "Discuss VSBA and NSBA Code of Ethics," to conceal from the Petitioner that he would be publicly censured, so that he would have no warning.[11] When the Petitioner appeared at the June 12th meeting, the Board presented him with the final version of the motion that the Board had approved at the May 30th Emergency Meeting. At least three of the six items specifically censured the Petitioner for speaking out on school board issues:

> 2. . . . "[Petitioner] spoke publicly against the board-approved draft budget. He also supported the village trustees in opposing the Union High School at their May 23 meeting despite the unanimous vote of the Prudential Committee to support the Union."
>
> 3. . . . "[Petitioner] has made public unsubstantiated allegations which have exposed the district to liability."
>
> 4. . . . "[Petitioner] corroborated the inaccurate data presented at the

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required steps being wholly omitted here: an investigation, a report, and thirty days' notice after receiving a report to allow an accused to prepare his or her defense. See, e.g., Henry Robert III & William Evans, Robert's Rules of Order (9th edition 1990), Chapter XX, §60.

[11] In *Berry v. Foster*, 180 Ariz. 233, 883 P.2d 470 (Ariz. 1994), a school board member who did get advance warning of an unlawful public censure was able to obtain a permanent injunction against the action.

> trustees' meeting, and his statements about teacher job security were not factual."

LaFlamme v. Essex Junction School District ___ Vt. ___ 750 A.2d 993, 995 (2000). The Board gave Petitioner a brief time to speak, and approved the censure.

The censure was the lead news item in the local newspaper. The Petitioner's constituents who had previously been helpful to him and supplied him with information would actively avoid him, actually turning and walking away from him.[12] The phone calls and letters from constituents stopped.[13] He ultimately was forced to resign because he was no longer effective[14]— an outcast no longer able to communicate with his constituents. Though he subsequently ran for the select board, he lost due to the censure.[15]

At trial, the Defendant made no objection to the substance of the trial court's instructions to the jury on due process. The jury returned a verdict for the Petitioner on the due process charge, and verdicts for the Defendant on the claims of handicap

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[12] Testimony of Arlene LaFlamme, Tr. September 3, 1997, p. 153, ll. 15-23.

[13] Id.

[14] Testimony of Stanley LaFlamme, Tr. September 2, 1997, p. 142, ll. 5-22.

[15] Testimony of George Dunbar, Sr., Tr. September 2, 1997, p. 256, ll. 23-25.

discrimination and restraint of future free speech. The Defendant raised no claim of inconsistent verdicts.

ARGUMENT

THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE STATE AND FEDERAL COURTS ARE UNCLEAR WHETHER DUE PROCESS OF LAW IS REQUIRED BEFORE THE GOVERNMENT OFFICIALLY AND INTENTIONALLY DAMAGES A PERSON'S REPUTATION IN REPRISAL FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS.

The Defendant issued an official governmental censure without due process in retaliation for the Petitioner's speaking out on public issues, ending the Petitioner's political career. However, the Vermont Supreme Court ruled that because the effect was only on Petitioner's reputation, the evidence was insufficient to be violation of due process. The Court relied on *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976) and *Siegert v. Gilley*, 500 U.S. 226, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991). Both of these cases involved only damage to reputation, which this Court ruled was not damage to a "liberty" or "property" interest cognizable under the due process clause of the Fourteenth Amendment. However, neither *Paul* nor *Siegert* involved retaliation for exercise of First Amendment rights.

This Court has previously held that when a State impinges directly upon interests in free speech or free press, the State must provide an opportunity for a fair adversary hearing prior to that action,

whether or not the speech or press interest is clearly protected under substantive First Amendment standards. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 n. 14 (1972).

The Courts of Appeal have disagreed whether a person is entitled to due process before defamation in retaliation for the exercise of First Amendment rights. In *Guy v. State of Illinois*, 958 F. Supp. 1300, 1310 (E.D. Ill. 1997), a federal district court found the question so uncertain that it refused to impose liability against a claim of qualified immunity.[16]

Cases finding due process liability for defamatory retaliation include *Duckworth v. Ford*, 995 F.2d 858, 859 (8th Cir. 1993) and *Hyland v. Wonder*, 972 F.2d 1129 (9th Cir. 1989), *cert. denied*, 508 U.S. 908, 124 L. Ed. 248, 113 S. Ct. 2337 (1993). In dicta the Seventh Circuit has indicated that, although defamation "is not actionable as such under the Constitution, but . . . it is actionable when used by public officials to punish a person for expressing his views." *Smart v. Board of Trustees of the University of Illinois*, 34 F.3d 432, 434 (7th Cir. 1994), *cert. denied*, 513 U.S. 1129, 115 S. Ct. 941, 130 L. Ed. 2d 885. In *Little v. North Miami*, 805 F.2d 962, 968-969 (11th Cir. 1986), the Court held that a public censure without due process implicated a liberty and property interest where it affected a lawyer's future prospects and the City acted in reprisal for him representing an adverse party. However, Eleventh Circuit has since suggested

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[16] No claim of qualified immunity was made in this case.

that there must be an alteration of a legal right or status that was not present in *Little Von Stein v. Brescher*, 904 F.2d 572, 582 (11th Cir. 1990).

Where there is no retaliation for exercise of First Amendment Rights, and only a damaged reputation, the Courts have found no liberty or property interest. In *Peloza v. Capistrano Unified School Dist.*, 37 F.3d 517, 522-23 (9th Cir. 1994), there was no procedural due process violation where it was not a First Amendment violation to require an employee to teach evolution. See also, *Townshend v. Hazleroth*, 875 F. Supp. 1293, 1300-02 (E.D. Mich. 1995); *Meyer v. University of Wash.*, 719 P.2d 98, 103 (Wash. 1986) (en banc).

However, in similar situations, when there in no interest otherwise protected, courts have found a cause of action under the First Amendment for retaliatory discipline for exercise of First Amendment rights. It has been held that a government cannot revoke a permit,[17] or transfer a public employee[18] for a retaliatory motive for exercise of First Amendment rights including applying for a supervisor's position.[19].

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[17] *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1313-1316 (9th Cir. 1989).

[18] *Thomas v. Carpenter*, 881 F.2d 828, 829 (9th Cir. 1989), *cert. denied*, 494 U.S. 1028, 108 L. Ed. 2d 612, 110 S. Ct. 1475 (1990).

[19] However, to prevail on a due process claim, the plaintiff must show that the defendants knew there

The Tenth Circuit Court ruled that even a volunteer cannot be terminated in retaliation for public speech, even though there is no inherent liberty or property right to be a volunteer. *Andersen v. McCotter*, 100 F.3d 723, 727 (10th Cir. 1996).

This Court has ruled that a government violates the First Amendment where it intentionally deprives a patronage employee of an otherwise unprotected interest in retaliation for exercise of free speech. *Elrod v. Burns*, 427 U.S. 347, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976). In *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 110 S. Ct. 2729, 111 L.Ed 2d 52 (1990), this Court ruled that otherwise unprotected job actions against a patronage employee are protected where government against reprisal for exercise of First Amendment rights, including such otherwise unprotected actions as hiring, transfer and recalls after layoffs. This Court ruled in a plurality opinion that an employee has a First Amendment obligation to conduct a reasonable investigation prior to employee discipline that may be based on the exercise of First Amendment rights. *Waters v. Churchill*, 511 U.S. 661, 114 S. Ct. 1878, 128 L. Ed. 2d 686 (1994). Even independent government contractors are protected from reprisal when they speak out on matters of public concern. *Board of Commissioners v. Umbehr*, 518 U.S. 668, 116 S. Ct. 2342, 135 L.Ed 2d 843 (1996). The

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would be no due process before the reprisal. *Gini v. Las Vegas Metropolitan Police Dept.*, 40 F.3d 1041, 1045 (9th Cir. 1994).

official use of otherwise discretionary actions such as threats to prosecute and actual prosecutions has frequently been found to be infringements when motivated to punish free speech. *E.g., Dombrowski v. Pfister*, 380 U.S. 479, 487, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965); *Butz v. Economou*, 438 U.S. 478, 57 L. Ed. 2d 895, 98 S. Ct. 2894 (1978); *Sloman v. Tadlock*, 21 F.3d 1462, 1469-70 (9th Cir. 1994); *Rakovich v. Wade*, 850 F.2d 1180 (7th Cir. 1988) (*en banc*).

Unlike a patronage employee, an elected member of a school board has not only the right but also even the duty to discuss public issues vigorously and strenuously advocate his or her positions. *Buckley v. Valeo*, 424 U.S. 1, 52-53, 96 S. Ct. 612, 46 L. Ed.2d 659, 707 (1976).

> For speech concerning public affairs is more than self-expression; it is the essence of self-government. The First and Fourteenth Amendments embody our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan* [376 U.S. 254, 270, 11 L. Ed.2d 686, 700-701, 84 S. Ct. 710 (1964)]

Garrison v. Louisiana, 379 U.S. 64, 74-75, 85 S. Ct. 209, 13 L. Ed.2d 125, 133 (1964).

The Vermont Supreme Court erred in refusing to consider the motive of retaliation in connection with

the damage to reputation. The Defendant requested no specific instruction to the jury on this point, hence waived any claim of error. *Pennsylvania R. Co. v. Minds*, 250 U.S. 368, 375, 63 L. Ed. 1039, 39 S. Ct. 531, 533 (1919). In simply ignoring the evidence before the jury, the Vermont Supreme Court invaded the province of the jury. *Basham v. Pennsylvania R.R. Co.*, 372 U.S. 699, 700, 83 S. Ct. 965, 966-67, 10 L. Ed. 2d 80 (1963).

An adverse verdict should have no effect on a successful claim. *Arnold v. Panhandle & S.F.R. Co.*, 353 U.S. 360, 361, 77 S. Ct. 840, 840-841, 1 L. Ed. 2d 889 (1957); see also, *A. & G. Stevedores v. Ellerman Lines*, 369 U.S. 355, 364, 82 S. Ct. 780, 786, 7 L. Ed. 2d 798 (1962); *Harris v. Rivera,* 454 U.S. 339, 344, 102 S. Ct. 460, 463, 70 L. Ed. 2d 530 (1981). A court has a "duty to save rather than destroy the general verdict 'if it is possible' and 'by exegesis if necessary.' " *Gallick v. Baltimore & O.R. Co.*, [372 U.S. 108, 119, (1963)]." *Julien J. Studley, Inc. v. Gulf Oil Corp.*, 407 F.2d 521, 529 (2d Cir. 1969). The Court must "exhaust all of the possible grounds" on which the allegedly inconsistent findings are based. *Arnold, id.*, 353 U.S. at 361, 77 S. Ct. at 841. Both as a matter of logic and of the right to trial by jury, it is improper for the Court to reason that the Petitioner lost more than one element of his First Amendment claim. See generally, *Merchant v. Ruhle*, 740 F.2d 86, 88-91 (1st Cir. 1984).

CONCLUSION

This case presents the question of whether an elected member of a governmental body can be the subject of an official discipline without due process of law in retaliation for the exercise of rights guaranteed by the First Amendment. As the Courts of Appeal and the Vermont Supreme Court have reached different answer to this important question of constitutional law and right to free speech, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

OPINION OF VERMONT SUPREME COURT

VT. SUPREME COURT
FILED IN CLERK'S OFFICE
Jan 21 2000

No. 97-493

Stanley LaFlamme	Supreme Court
v.	On Appeal from Chittenden Superior Court
Essex Junction School District and Essex Junction Prudential Committee	April Term, 1999

Linda Levitt, J.

Edwin L. Hobson, Burlington, for Plaintiff-Appellee.

Douglas C. Pierson and Thomas M. Higgins of Pierson, Wadhams, Quinn & Yates, Burlington, for Defendants-Appellants.

PRESENT: Amestoy, C.J., Dooley, Morse, Skoglund, JJ., and Allen, C.J. (Ret.), Specially Assigned

MORSE, J. Defendants Essex Junction School District and Essex Junction Prudential Committee

(school board) appeal a jury verdict awarding plaintiff Stanley LaFlamme damages for violation of his right to procedural due process under 42 U.S.C. §1983. Because the evidence was insufficient to support such a claim as a matter of law, we reverse.

This controversy arose when the Essex Junction Prudential Committee, which functions as the school board for the Village of Essex Junction, publicly "censured" LaFlamme, who had been elected to the Prudential Committee in May 1994. Conflict and tension between LaFlamme and other committee members plagued his tenure. For example, members considered LaFlamme difficult to work with and disruptive of committee proceedings. The committee particularly took umbrage at LaFlamme's participation in a May 1995 meeting of the Village of Essex Junction Board of Trustees, at which the formation of a union high school was discussed. During the meeting, LaFlamme offered opinions that, in the Prudential Committee's view, were inaccurate, offensive, and belied its position.

In February 1995, the Chair of the Prudential Committee, Leslie Mooney, sought advice concerning the committee's working relationship with LaFlamme from the Executive Director of the Vermont School Board Association. According to Mooney, the committee considered the possibility of censuring LaFlamme because the members had been unsuccessful in their several attempts to discuss with him issues concerning his committee membership.

The committee held a special meeting on May 30, 1995, which LaFlamme did not attend. While in executive session, the members discussed the ramifications of censure. They agreed to publicly censure LaFlamme during the next regularly scheduled meeting, subject to the approval of the committee's legal counsel.

Following the meeting, Mooney discussed with the committee's counsel the logistics for censuring LaFlamme. Counsel informed Mooney that the committee was not required to publicly warn LaFlamme of the upcoming censure. She and another member drafted the censure motion and marked it on the agenda as a code of ethics discussion to avoid attracting attention and turning the matter into a "circus."

On June 12, 1995, the Prudential Committee held a regularly scheduled meeting, which LaFlamme attended. The committee, again in executive session, presented him with the censure motion. Its substance read in pertinent part:

> After viewing the tape of the Village Trustees meeting of May 23, the consensus of the members present . . . was to protect the public's interest by censuring Stan LaFlamme for violating [Vermont School Boards Association] and [National School Boards Association] Code of Ethics, district policy, and standards of good boardsmanship. The board has previously attempted to discuss these concerns with Mr.

LaFlamme in executive session, but he was unwilling to do so.

I [James Riley, who read the motion] make a motion that Stan LaFlamme be reprimanded for failing to uphold the following tenets of the codes of ethics:

> 1. Attend all regularly scheduled board meetings insofar as possible, and become informed concerning the issues to be discussed at those meetings. Mr. LaFlamme failed to attend several meetings, has left meetings before adjournment, and has failed to attend executive sessions at which information critical to sound decision-making was presented. He has indicated to two board members that he does not intend to attend any further executive sessions.
>
> 2. Abide by board decisions regardless of how individuals voted. Mr. LaFlamme spoke publicly against the board-approved draft budget. He also supported the village trustees in opposing the Union High School at their May 23 meeting despite the unanimous vote of the Prudential Committee to support the Union.
>
> 3. Listen to legal counsel and constructive criticism to protect the board and the school system from

liability. Mr. LaFlamme has made public unsubstantiated allegations which have exposed the district to liability.

4. Accept the responsibility to secure facts before arriving at conclusions. Mr. LaFlamme corroborated the inaccurate data presented at the trustees meeting, and his statements about teacher job security were not factual.

5. Board policies BBAA Board member Authority and BBFA Conflict of Interest state in part that "an individual board member, including the Chairman, shall have power only when the board, by vote, has delegated authority to him or her." Mr. LaFlamme invited the trustees to make their presentation at [t]he Prudential Committee hearing without authorization from the Board. Under procedure BD-R, board meeting agendas are established by the Chair and the Superintendent.

6. Good boardsmanship requires that each member take on a fair share of the workload, including committee assignments. Mr. LaFlamme has not fulfilled his responsibilities around sub[-]committee work.

(Emphasis in original.)

Mooney explained to LaFlamme that, unless he was willing to discuss the committee's concerns, it was prepared to vote on the censure motion during the regular meeting. LaFlamme responded by noting that the motion could not properly be brought during executive session. At that point, the executive session ended and the Prudential Committee resumed its meeting in public.

Committee member James Riley read the motion in its entirety, after which LaFlamme spoke in his own defense. LaFlamme took issue with many of the allegations made in the motion, and challenged in several respects the information upon which the allegations rested. After hearing LaFlamme, the committee granted the motion to censure by a vote of four to one.

On July 21, 1995, LaFlamme sued defendants and the members of the Prudential Committee individually. The superior court dismissed the suit against the individuals on the basis of immunity afforded to municipal officers under 24 V.S.A. § 901(a). While this lawsuit was pending, LaFlamme served on the Prudential Committee a second year before resigning. During that year he made an unsuccessful bid for election to the Village Trustees.

LaFlamme raised three claims: (1) failure to accommodate handicap under 9 V.S.A. § 4502, (2) denial of the right to free speech, and (3) denial of the right to procedural due process. He withdrew a fourth claim alleging defamation.

The jury found in favor of defendants on the handicap accommodation and free speech claims, but awarded LaFlamme $75,000 compensatory and $25,000 punitive damages for violation of his right to procedural due process. In essence, the claim upon which the verdict was rendered, as evidenced by the jury instructions, was that the Prudential Committee damaged LaFlamme's reputation so severely "that his opportunity and ability to associate with others were significantly limited and that the damage resulted without due process of law." Defendants appeal on the ground that they were entitled to judgment as a matter of law.

Before reviewing the merits of the appeal, we explain the concept of censure as a method of discipline. In Vermont, school boards derive their power from statute. See *Cole v. Town of Hartford School Dist.*, 131 Vt. 464, 467, 306 A.2d 101, 103 (1973). There is no statutory provision expressly vesting school boards with the authority to censure one of its members. School boards may, however:

> approve or disapprove rules and regulations proposed by the principal or superintendent for the conduct and management of public schools in the district[;] . . . take any action, which is required for the sound administration of the school district[;] . . . exercise the general powers given to a legislative branch of a municipality[; and] . . . establish policies and procedures designed to avoid the appearance of board member conflict of interest.

16 V.S.A. § 563 (1), (2), (15), (20). Also, Robert's Rules of Order govern the conduct of school board meetings. See 16 V.S.A. § 554. Accordingly, the Essex Junction School District adopted Robert's Rules to govern the conduct of all meetings.

As discussed in Robert's Rules, reprimand is one of several disciplinary actions an organization may undertake. See Sarah Corbin Robert, Robert's Rules of Order Newly Revised § 60, at 639 ("Punishments that a society can impose generally fall under the headings of reprimand, fine . . ., suspension, or expulsion."). Censure is a form of reprimand, defined as "[t]he formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct." Black's Law Dictionary 203 (5th ed. 1979). Per Robert's Rules, conduct subject to disciplinary action such as reprimand may be divided into two categories: (1) offenses committed during a meeting and (2) offenses committed by members outside a meeting.

Determining whether the Prudential Committee possessed the authority to censure LaFlamme, the trial court ruled:

> You've heard that there was a question as to whether [the Prudential Committee] had the legal right to censure the plaintiff. The court has determined that it did not have the authority to censure the plaintiff for conduct which occurred outside of committee meetings. It did have the right to censure the plaintiff for

words and conduct which occurred during committee meetings.

We need not decide whether the court was correct in this ruling. As discussed below, defendants were entitled to judgment in their favor on the due process claim because LaFlamme failed to establish the requisite elements of a procedural due process violation.

To maintain a procedural due process action against a governmental entity, a plaintiff must show that he was deprived of interests protected by the Fourteenth Amendment. See *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). "[T]o determine whether due process requirements apply in the first place, we must look . . . to the nature of the interest at stake. We must look to see if the interest is within the Fourteenth Amendment's protection of liberty and property." *Id.* at 570-71 (citation omitted); accord *Brennan v. Town of Colchester*, 10 Vt. L.W. 83, 84 (1999) (considering as initial step nature of claimed interest to determine if it is within scope of Fourteenth Amendment's protection of liberty and property).

The "stigma" that may result from a defamatory disciplinary action does not by itself implicate a "liberty" or "property" interest protected by the Due Process Clause. See *Paul v. Davis*, 424 U.S. 693, 701-12 (1976) (appearance of plaintiff's name and photograph on flyer captioned "Active Shoplifters" and distributed among merchants did not deprive plaintiff of any liberty or property rights); *Levinsky v. Diamond*, 151 Vt. 178, 196-97, 559 A.2d 1073, 1085 (1989)

("[M]ore than . . . [stigma] must be shown before a cognizable § 1983 claim arises."), overruled in part on other grounds by *Muzzy v. State*, 155 Vt. 279, 583 A.2d 82 (1990). Rather, for such stigma to invoke the procedural protections of due process under the Fourteenth Amendment, the governmental action must also deprive, extinguish, or significantly alter a right or status previously recognized and protected by law. See *Paul*, 424 U.S. at 701-12; see also *Siegert v. Gilley*, 500 U.S. 226, 233-34 (1991) (recognizing "stigma plus" test articulated in *Paul*); *Greenwood v. New York*, 163 F.3d 119, 124 (2d. Cir. 1998) (same).

Public censure or reprimand does not give rise to a procedural due process claim so long as injury is solely to a plaintiff's reputation. See *Siegert*, 500 U.S. at 234. To illustrate, compare the formal reprimand or discipline of a licensed professional, which may implicate due process because of the property interest in the license to practice the profession. The license to practice law, for example, is a property interest, infringement of which requires due process. See *In re Ellis*, 680 N.E.2d 1154, 1160 (Mass. 1997) ("A lawyer has a constitutionally protected property interest in his or her license to practice law, and is entitled to due process before deprivation of that interest.") (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *In re Ruffalo*, 390 U.S. 544, 550 (1968)).

The same may be said of the license to practice other professions or trades, depending on the legal status of the position or licensure. See *Barry v. Barchi*, 443 U.S. 55, 64 (1979) (based on New York law, horse

trainer held property interest in license); *Sabow v. United States*, 93 F.3d 1445, 1456 (9th Cir. 1996) (medical license considered property interest); *Newman v. Burgin*, 930 F.2d 955, 959 (1st Cir. 1991) (state university's decision to publicly censure tenured professor and bar from administrative positions for five-year period treated as deprivation of liberty or property); *In re Smith*, 10 Vt. L.W. 96, 99 (1999) (statutory procedures and nurse's substantial interest in maintaining her license - "her livelihood" - afforded nurse due process protections).

Nowhere in the evidence is it demonstrated how the Prudential Committee's public censure, regardless of its legality, damaged more than LaFlamme's reputation and deprived him of a "liberty" or "property" interest. In response to defendants' appeal, LaFlamme argues that the committee's action affected his performance as a committee member, interfered with his freedoms of speech and association, and prevented his successful pursuit of a position as a village trustee. The evidence, however, does not support the necessary deprivation, extinguishment, or significant alteration of recognized right or status to allow a finding that the Prudential Committee violated LaFlamme's due process rights.

I. Liberty Interest

LaFlamme argues that, "where the actions of a governmental authority are a deliberate effort to punish and interfere with the exercise of free expression or free association . . . an action lies [under] 42 U.S.C. § 1983." Certainly, an infringement

of First Amendment rights involves one's liberty. Even though "[d]amage to reputation alone . . . does not implicate a liberty interest," when coupled with a deprivation of a First Amendment right, it may rise to the level of a due process violation. See *Silano v. Sag Harbor Union Free School Dist. Bd. of Educ.*, 42 F.3d 719, 724 (2d Cir. 1994). There are two factors in this case, however, that are fatal to LaFlamme's assertions as well as to the verdict in his favor.

First, with regard to the infringement of his free speech, LaFlamme presented that issue to the jury and lost. He cannot prevail on a due process claim by way of a violation of his right to free speech if the jury found that no such violation in fact occurred. Several courts have similarly dealt with a plaintiff's procedural due process claim brought in conjunction with a First Amendment claim, and, for lack of a First Amendment violation in the first instance, have held that the plaintiff did not suffer a denial of due process. See *id.* (school board's censure of fellow member for presentation to tenth-grade students did not violate First Amendment or procedural due process); *Peloza v. Capistrano Unified School Dist.*, 37 F.3d 517, 522-23 (9th Cir. 1994) (high school biology teacher's free speech and procedural due process claims based on school district's requirement that he teach evolutionism and order barring him from discussing his religious beliefs with students were properly dismissed); *Townshend v. Hazleroth*, 875 F. Supp. 1293, 1300-02 (E.D. Mich. 1995) (where plaintiff argued that defendants deprived him of liberty

interest by retaliating against his exercise of free speech by filing ethics complaint and making defamatory statements, court held that plaintiff "failed to provide the court with any authority that actions of defamation constitute a constitutional violation of First Amendment rights"); *Meyer v. University of Wash.*, 719 P.2d 98, 103 (Wash. 1986) (en banc) (holding that tenured professor's due process claim, where, after being reprimanded, he argued that "his liberty interest was affected because his reputation was damaged, coupled with a violation of his . . . right to free speech," was properly dismissed in part because his First Amendment rights were not violated).

Second, particularly with regard to the right of free association, the evidence does not support a finding that the censure deprived LaFlamme of this right or otherwise significantly altered this liberty. The Supreme Court clearly stated in *Paul* that the "weight of [its] decisions establishes no constitutional doctrine converting every defamation by a public official into a deprivation of liberty." *Paul*, 424 U.S. at 702. Instead, it is only those defamations, reprimands, or disciplinary acts that also effectuate a deprivation, extinguishment, or significant alteration of a liberty or property interest which become actionable under the Due Process Clause. In reviewing those cases in which the Court has found a violation of procedural due process, the Court noted that liberty or property interests had been "deprived," "den[ied]," "remov[ed]," and "distinctly altered or extinguished." *Id.* at 708-11. In other words, we believe that more than a mere

interference with one's association with others - the core injury wrought by defamation - is required to support a finding of denial of due process. As we stated in *Levinsky*, the argument that there need not be actual deprivation in order to find a § 1983 violation "ignores the language of the enabling statute, which mandates liability for the 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws.'" *Levinsky*, 151 Vt. at 196, 559 A.2d at 1085 (quoting 42 U.S.C. § 1983).

The censure's adverse effect on LaFlamme's associations and ability to perform as a member of the Prudential Committee did not amount to a deprivation of his right of free association. The committee did not, in concert with censure, bar LaFlamme from associating with others or otherwise impose restrictions upon his ability to associate. The censure no doubt adversely affected his reputation, but, as discussed above, such "stigma" is not enough to qualify as denying or distinctly altering his freedom to associate. Despite LaFlamme's assertion that "the jury found . . . that the censure seriously impaired the exercise of his office," the record does not illustrate a violation of his right to freely associate. Therefore, the evidence simply does not support a finding of a deprivation a liberty interest sufficient to sustain the verdict.

II. Property Interest

The evidence similarly fails to show that LaFlamme was deprived of a property interest. "Property interests are not created by the Constitution,

'they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law . . . .' *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985) (quoting *Roth*, 408 U.S. at 577); accord *Burroughs v. West Windsor Bd. of School Dirs.*, 138 Vt. 575, 578, 420 A.2d 861, 863 (1980) ("Whether [a] right is a property interest depends upon state law."). In Vermont, for example, the collective-bargaining agreement provides state employees with a property interest in their employment, thus affording due process protections if they face the prospect of discharge. See *In re Towle*, 164 Vt. 145, 153, 665 A.2d 55, 61 (1995).

In this case, there exist two possible hooks upon which a property interest might hang: membership in the Prudential Committee and the resulting potential afforded to gain future political office. Neither, however, constitutes a property interest.

Assuming without deciding that Vermont law vests school board members with a property interest in that membership, LaFlamme's voluntary resignation from the position did not in turn impute to the committee the act of depriving him of a property interest. LaFlamme retained his position on the Prudential Committee for approximately one year following the censure. The committee did not remove him from office. As the Court noted in Paul, it "has never held that the mere defamation of an individual . . . was sufficient to invoke the guarantees of

procedural due process absent an accompanying loss of government employment." *Paul*, 424 U.S. at 706.

LaFlamme also held no cognizable property interest in the possibility of being elected village trustee. "A property interest arises when a person has a 'legitimate claim of entitlement' to a governmental benefit, rather than a 'unilateral expectation'" *Brennan*, 10 Vt. L.W. at 84 (quoting *Roth*, 408 U.S. at 577). Even if the censure did impair his pursuit of this position, such an effect does not amount to a deprivation of a property interest. LaFlamme's unilateral hope of becoming a village trustee was by no means an entitlement to the position.

Because the Prudential Committee's public censure did not deny or significantly alter a liberty or property interest, defendants were entitled to judgment as a matter of law on the procedural due process claim.

Reversed.

FOR THE COURT:

/s/ James Morse
Associate Justice

ENTRY ORDER - DECISION

ENTRY ORDER

SUPREME COURT DOCKET NO. 97-493

APRIL TERM, 1999

VT. SUPREME COURT

FILED IN CLERK'S OFFICE

JAN 21 2000

Stanley LaFlamme	Supreme Court
v.	On Appeal from Chittenden Superior Court
Essex Junction School District	April Term, 1999

In the above entitled cause, the Clerk will enter:

Reversed.

FOR THE COURT:

/s/ James L. Morse,
Associate Justice

Concurring:

/s/ Jeffrey L. Amestoy,
Chief Justice

/s/ John A. Dooley,
Associate Justice

/s/ Marilyn R. Skoglund,
Associate Justice

/s/ Frederic W. Allen,
Chief Justice (Ret.)
Specially Assigned

ENTRY ORDER – MOTION TO REARGUE

ENTRY ORDER

SUPREME COURT DOCKET NO. 97-493

APRIL TERM, 1999

VT. SUPREME COURT

FILED IN CLERK'S OFFICE

MAY 2 2000

Stanley LaFlamme	Supreme Court
v.	On Appeal from Chittenden Superior Court
Essex Junction School District	April Term, 1999

In the above entitled cause, the Clerk will enter:

Plaintiff's motion to file a reply to defendants' response to the motion to reargue is granted. Plaintiff's motion to reargue, filed February 4, 2000, fails to identify points of law or fact misapprehended or overlooked by this Court. Therefore, the motion is denied. See V.R.A.P. 40.

FOR THE COURT:

/s/ James L. Morse,
Associate Justice

Concurring:

/s/ Jeffrey L. Amestoy,
Chief Justice

/s/ John A. Dooley,
Associate Justice

/s/ Marilyn R. Skoglund,
Associate Justice

/s/ Frederic W. Allen,
Chief Justice (Ret.)
Specially Assigned

MINUTES OF MAY 30, 1995 MEETING OF SCHOOL BOARD

PLAINTIFF'S EXHIBIT 9

ESSEX JUNCTION SCHOOL DISTRICT
Special School Board Meeting
Central Office
7 Meadow Terrace
Essex Junction, VT

Tuesday, May 30, 1995

REGULAR SESSION MINUTES

BOARD MEMBERS PRESENT: Leslie Mooney, Kate Soules, Jim Riley,

ADMINISTRATORS PRESENT: Bob Harrison, Roger Derby

OTHERS PRESENT: Brain [sic] Dubie, Maria Durham, George Boucher, Diane Clemens

1. Call to Order.

The meeting was called to order by Leslie Mooney at 7:35 pm.

2. Last Minute Preparation for Hearing on Union High School Vote

Leslie Mooney passed out copies of the commentary put in the Essex Reporter by the Essex Junction Board of Trustees. The board then viewed the video tape of the Trustees' meeting of May 23. (Mark Lords arrived at approximately 8:00 pm.)

Discussion followed concerning the accuracy of the data that was presented to the Village Trustees during Ron Court's presentation. Areas identified included: enrollment figures, how the value was determined for the high school, the vote by the Union High School Study Committee on recommending the formation of the Union High School, tuition rates, per pupil costs, costs associated with the town building, population projections concerning representation on the Union board, capacity at the high school, and allocation of construction costs.

The board decided to make a presentation at the beginning of the May 31 meeting to address the identified areas of misinformation, and provide a brief history of the issue and the process used by the Union High School Study Committee. The board would also have a handout available for members of the audience, that would answer some of the most asked questions.

The board then discussed the role of one of its members at the Village Trustee meeting.

MOTION by Jim Riley / seconded by Mark Lords to move into executive session to discuss personnel (Title One, Chapter 5, Subchapter 2, Section 313; #4.) at 10:05 p.m. Vote 4-0. Motion approved.

The board entered back into open session at 10:35 pm.

MOTION by Kate Soules / seconded by Jim Riley to approve the letter for submission to the Essex Reporter as a Commentary from the School House. Vote 4-0. Motion approved.

5. Adjourn.

MOTION by Kate Soules / seconded by Jim Riley to adjourn at 10:36 pm. Vote 4-0. Motion approved.

Respectfully submitted,

Kate Soules
Clerk of the Board

Plaintiff's Exhibit 10

ESSEX JUNCTION SCHOOL DISTRICT
Special School Board Meeting

Central Office
7 Meadow Terrace
Essex Junction, VT

Tuesday, May 30, 1995

EXECUTIVE SESSION MINUTES

BOARD MEMBERS PRESENT: Leslie Mooney, Kate Soules, Jim Riley, Mark Lords
OTHERS PRESENT: Brain [sic] Dubie, Marla Durham

1. Executive Session: Personnel

MOTION by Jim Riley / seconded by Mark Lords to move into executive session to discuss personnel (Title One, Chapter 5, Subchapter 2, Section 313, 4#4.) at 10:05 pm. Vote 4-0. Motion approved.

The board discussed what a public censure would mean and if there were any legal ramifications it should be aware of. Leslie Mooney will check with the board's legal counsel. The board decided that if legal counsel's opinion was in the affirmative, a public censure will be made at the June 12 meeting.

The board entered back into open session at 10:35 pm.

Respectfully submitted,

Kate Soules
Clerk of the Board

Excerpt, Instructions to the Jury

THE COURT: Ladies and gentlemen, we come to that portion of the trial where you are -- are instructed on the law that applies in this case. You've now heard all of the evidence. You have heard the arguments of both attorneys and you have learned the conclusions, which each party would like you to draw from the evidence. You may accept or reject the arguments of the attorneys depending upon whether or not they make sense to you. A lawsuit is a method of settling differences among people. It's important that a fair and just result be reached.

As jurors, your duty is to decide the facts from all the evidence you have heard and the exhibits, which have been submitted. You are the sole and exclusive judges of the facts. On the other hand, you are required to accept the law of the case as I give it to you in these instructions. You are bound by the law whether or not you agree with it. And the process by which you arrive at a verdict is first to decide the facts from all of the evidence in the exhibits and then you apply the law that I give you to the facts. The result you reach will be your verdict.

I've tried to be impartial and not express an opinion as to how this case should be decided. And you should not conclude from any ruling that I have made or from anything that I have said that I have an opinion about this case one way or the other. And in your deliberations, you should not consider any

matters which have been stricken from the record or answers I told you to disregard.

The defendant is a School District. It is liable for the acts of its School Board. It is entitled to receive the same rights, including the right to a fair trial, as an individual would be entitled to receive.

The plaintiff claims that the defendant, School District, wrongfully deprived him of certain rights. Since the plaintiff brought this lawsuit, it is he who must prove his claims. He must prove his claims by what is called a preponderance of the evidence. A preponderance of the evidence simply means that something is more likely true than not true. You should decide whether the plaintiff's evidence is more believable than the defendant's evidence by looking at the quality of the evidence presented. If the plaintiff has convinced you that his claims are more likely true than not true, you will find in favor of the plaintiff since the plaintiff has proven his claims by a preponderance of the evidence. If both the plaintiff's side and the defendant's side are equally believable or if the defendant's side is more believable, you will find in favor of the defendant.

The plaintiff has brought several claims against the defendant. The first claim is that the defendant failed to accommodate the plaintiff's disability in its scheduling of the May 30, 1995 meeting.

To prove this claim, the plaintiff must show that number one, he has a disability which limits one or

more major life activities or has a record of such impairment.

Number two, that the defendant was aware of the type and extent of the plaintiff's disability. Number three, that the plaintiff requested accommodations for his disability. That is rescheduling the May 30, 1995 meeting. Number four, that the defendant failed to make reasonable accommodations for the plaintiff's disability in that it failed to reschedule the meeting. And number five, that the rescheduling of the meeting was necessary, so the plaintiff could attend the meeting. The plaintiff must prove factors -- elements one through five by a preponderance of the evidence.

State law required the defendant to make reasonable scheduling changes when changes are necessary to allow persons with disabilities to attend meetings. However, the defendant need not make such scheduling changes if it proves that the changes would result in an undue burden.

The plaintiff has another claim against the defendant. He argues that the defendant violated his Constitutional right to free speech.

In order to prove this claim, the plaintiff must show, number one, that the conduct of the plaintiff -- that the conduct that the plaintiff complains of was conducted by the defendant under color of state law. In other words, the plaintiff must show that the defendant's conduct was intended or perceived as an official act. Number two, that the defendant's conduct

-- conduct deprived or adversely affected the plaintiff's right to free speech. You should consider whether the defendant's conduct had the effect of chilling or preventing him from exercising his right to free speech. Number three, that the defendant acted with retaliatory intent against the plaintiff in abridging his free speech. The defendant may not intentionally retaliate against the plaintiff, because it does not like or agree with the plaintiff's opinions. The defendant may act in the furtherance of its legitimate interests to control what is said and done at Board meetings, even though its acts may have incidentally chilled the plaintiff's right to free speech.

If you find that the defendant had both a legitimate reason for its action in controlling the plaintiff's behavior in Board meetings and a retaliatory intent, then you should consider -- then you should decide whether the defendant would have acted in the same way, even if it had not intended to retaliate against the plaintiff. If it would have acted in the same way, you should find in favor of the defendant as to this claim. If it would not have acted in the same way, you should consider whether the plaintiff has proven all other parts of his claim.

The plaintiff's third claim is that the defendant violated his Constitutional rights by depriving him of liberty without due process of law.

To prove this claim, the plaintiff must again show that number one, the defendant acted under color of state law, as explained earlier. Number two, that the defendant's conduct deprived the plaintiff of

his liberty without due process of law.

Generally, one's reputation is not considered to be a property interest or a liberty interest deserving of due process protections. However, if the defendant acts so as to injure the plaintiff's reputation and the damage is so severe as to seriously limit the plaintiff's opportunity and ability to associate with others, there may be a deprivation of the plaintiff's liberty. In those instances, the plaintiff is entitled to due process of law.

Due process of law means that the plaintiff should receive reasonable notice of the charges against him, an opportunity to pare -- prepare a defense and an opportunity to defend himself at a fair hearing.

It is the plaintiff's burden to prove that the damage to his reputation was so severe that his opportunity and ability to associate with others was -- were significantly limited and that this damage to his reputation was done without due process of law.

You've heard whether there was a question as to whether the defendant had the legal right to censure the plaintiff. The Court has determined that the defendant did not have the authority to censure the plaintiff for conduct which occurred outside of Board meetings. It had no authority to censure the plaintiff for what he said outside of Board hearings -- meetings. The defendant did have the right to censure the plaintiff for words and conduct which occurred during Board meetings.

[Damage and Concluding Instructions Not Included.]

Unofficial Transcript Containing Excerpts of Exhibit 19, Videotape of May 23, 1995 Meeting of Select Board of the Village of Essex

The following Unofficial Transcript prepared by Defendant, contains excerpts of Exhibit 19, Videotape of May 23, 1995 Village Trustees Meeting, contains the material that the Board found offensive:

Dunbar: Accept a couple of questions from the audience. . . Go ahead Stan.

Petitioner: Just a couple of questions

Dunbar: That's fine.

Petitioner: One, Ron when you—mentioned job security. We've got to put that into perspective. Job security is only a one-year thing.

Trustee: Is that right?

Petitioner: If the Union goes through, sure those teachers are going to stay one year. But who knows what the new board will do. And with cuts the way they went this year, nobody is guaranteed.

The other comment I'd make, or request, is, the Prudential Committee is having a public forum on the 31st of May, and I think it would be great as your board sending a representative, if not Ron, someone else to present this slide show there. This is by far the best I've seen.

Trustee: Would have hoped the Prudential Committee would have driven for that. . .Prudential

Committee is obligated to respond... Want to see facts...

Petitioner: Oh, absolutely

Dunbar: I think what he is saying, is that the Board hasn't seen these. And you're saying we should get up there.

Petitioner: They're not going to see these facts unless somebody presents them. That's the point I'm trying to make. And I agree with you 100%. We've seen one side of the story.

* * *

Dunbar: Wasn't here... Still see a reduction.

Petitioner: The other issue too, to look at, is they say it's going to hurt quality of education. I've been around schools long enough to know that the seasoned professionals are just that. And that's your quality of education, regardless if you've got 50 teachers or 200 teachers. Numbers don't mean a thing. The question, is bigger better? That's the question people have to answer in their minds.

Dunbar: Good data. I'm not that familiar with every detail. Stan could tell us that. The data is reasonably accurate? Stan let me ask you a question while we're waiting for this to get signed. We've done it anyway, but do you think it inappropriate for something as big and as important to the Village as this, that we do take a position? Do you think that's inappropriate or appropriate?

Petitioner: Personally, no I don't. Because it's going to impact the community as a whole, not just the educational community.

Supreme Court, U.S.
FILED
AUG 31 2000
CLERK

(2)

No. 00-0173

IN THE

Supreme Court of the United States

STANLEY LaFLAMME,

Petitioner,

v.

ESSEX JUNCTION SCHOOL DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

RESPONDENT'S BRIEF IN OPPOSITION

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Douglas C. Pierson, Esq.
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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Statement of the Case.

The Vermont Supreme Court's Decision (the "Decision") provides the essential facts of this matter. Petitioner's Appendix ("App.") 19. To summarize, in May 1994, Petitioner was elected to the Village of Essex Junction Prudential Committee (the "Committee"), which functions as the Village's school board, and took office in July, 1994. App. 20. Petitioner's fellow Committee members found that he failed to perform his Committee responsibilities, and interfered with the orderly conduct of Committee business. App. 20, 22 and 23. He failed to attend many Committee meetings and left many others early. App. 22. Other members felt he was misrepresenting the Committee's position on formation of a union high school with the Town of Essex. App. 20.

The other members attempted to discuss Petitioner's performance with him, but he refused. App. 20 and 24. Out of frustration with his performance and behavior, the Committee Chair sought the advices of the executive director of the Vermont School Board Association, App. 20, who advised the Chair that as a last resort the Committee could censure Petitioner. App. 20-21. The Committee also contacted its own attorney about an appropriate response to Petitioner, and finally, how to censure him. App. 21.

On May 30, 1995, the Committee convened a meeting which Petitioner chose not to attend, at which the other members discussed preparing a motion to censure Petitioner (the "Censure Motion") App. 21. In executive session on

June 12, 1995, the other members asked Petitioner to discuss their concerns regarding his performance. App. 21-23. Had Petitioner been willing to discuss those concerns, there would have been no censure. App. 24. As it was, Petitioner refused to discuss the subject, and told the other members that whatever they had to say should be said in public. App. 24. The Censure Motion was then presented in open session, Petitioner spoke in his own defense and the Committee proceeded to pass the motion. App. 24.

The case was tried to a jury on three counts: (i) failure to accommodate handicap (9 V.S.A. § 4502); (ii) free speech violation (42 U.S.C. § 1983) (the "Free Speech Claim"); and (iii) procedural due process violation (42 U.S.C. § 1983) (the "Due Process/Association Claim"). App. 24. A fourth count for defamation was voluntarily dismissed during trial. App. 24. The jury found for Respondent on Counts One and Two and for Petitioner on Count Three, awarding him $75,000 of compensatory and $25,000 of punitive damages. App. 25. Respondent appealed the judgment on the Due Process/Association Claim.[1] Among other issues, Respondent argued that it was entitled to judgment as a matter of law because Petitioner failed to prove that he had been deprived without due process of his right to freedom of association or of any other constitutionally protected right. The Vermont Court agreed and reversed. App. 19.

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1. Initially, Petitioner cross-appealed to the Vermont Court, but he did not brief the cross-appeal and dropped it at oral argument. Thus the only claim before the Vermont Court, was Respondent's appeal of the Due Process/Association claim.

Petitioner now seeks review of the Decision on Petition for a Writ of Certiorari, but the Due Process/Association Claim which was decided by the Vermont Court is not the claim on which he seeks review.

A. Supreme Court Rule 15.2 Misstatements of Fact.

Although Petitioner's Statement of the Case is more argumentative than factual, he does make two material misstatements of fact.

1. "The Defendant issued an official governmental censure without due process in retaliation for petitioner's speaking out on public issues . . ." Petition 12.

As set forth in the Decision, the Censure Motion identified six specific violations of the Committee's Code of Ethics, district policy and standards of good boardsmanship. App. 21-23. Only one of those reasons was related to Petitioners' comments at the June 12, 1995 open meeting regarding Committee matters. The censure was the culmination of numerous well-founded and oft-articulated reasons about which the Committee Chair testified.[2] Trial Transcript 9/4/97 at 161.

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2. Trial Testimony of Committee Chair Leslie Mooney:

> Q. Some suggestion and questions by counsel that it was the performance of Mr. LaFlamme at the May 23 Trustees' meeting that resulted in the censure?

(cont'd)

2. "At trial, the Defendant made no objection to the substance of the trial court's instructions to the jury on due process." Petition 10.

Thoughout the trial Respondent objected to the substance and propriety of the Due Process/Association Claim and the jury instruction.[3] At the close of the evidence, Respondent

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(cont'd)

> A. No. That was the last straw as far as I was concerned.
>
> Q. Many other items you weren't -- you weren't able to hear the testimony of the others, but -- so, we won't go into it, but there were many other factors that went into your consideration?
>
> A. Many Others.

3. At the first opportunity, Respondent objected to evidence that was not relevant to Petitioner's claims plead in the Complaint.

> Mr. PIERSON: May it please the Court, I understood the defamation -- defamation claim had been dropped as a claim so we object to this line of inquiry.
>
> MR. HOBSON: That's true, defamation has been dropped, but the issues relevant to the 1993 claim. (sic)
>
> MR. PIERSON: We deny that.
>
> THE COURT: At this point I don't know what is relevant to the 1993 claim. (sic) I'm not sure I have
>
> (cont'd)

(cont'd)

what the elements are down so were going to allow it at this point and if later we discover that it's not relevant to the claim, we'll ask the jury to disregard it.

Transcript, 9/2/97 at 132.

At the close of Appellee's case-in-chief, Appellant moved for Judgement as a matter of law, on a number of claims, and the court introduced due process for the first time in the case.

THE COURT: Now I was also thinking of charging on the due process claim. In other words, the deprivation of -- the absence of due process in the handling of the -- of the hearing.

MR. HIGGINS: That --

THE COURT: -- that the censure was ultimately issued.

MR. HIGGINS: Well, I would make two points with respect to due process. First, we don't believe there's a due process claim asserted under the complaint.

Second, Mr. LaFlamme hasn't asserted a -- a right that has been deprived him for which he is entitled to due process. He has -- he is not an employee of the School District and is not entitled to notice and hearing of a termination or anything of that sort.

* * *

THE COURT: And whether or not his Complaint -- let's just see what he has in his Complaint. Well, I don't know, paragraph 20 –

(cont'd)

moved for judgment as a matter of law on this claim on the grounds that there was no proof that Petitioner had been deprived of a federally protected right.

Respondent also objected to the jury instruction on the ground that the Due Process/Association claim was not pled or otherwise properly raised both before and after the charge was given to the jury.

Following the trial, Respondent moved for judgment as a matter of law and objected to the Due Process/Association Claim on the same basis raised at trial, as not properly pled, proven or charged to the jury.

The issues of whether Petitioner pled or proved a Due Process/Assocation Claim, and whether the trial court properly instructed the jury on such a claim was properly before the Vermont Court.

(cont'd)

> MR. HIGGINS: Well, Your Honor, it's -- I'm sorry. This is -- there is no -- due process doesn't prefect -- protect Mr. Laflamme for state created rights. It only protects him, it only applies to federal protections and so he doesn't have any due process rights under the state statutes. I mean, that's -- that's a given that I can provide lots of Supreme Court (unclear), that I can provide a lot of Supreme Court

Transcript, 9/3/97 at pp.183-185.

II. Summary.

The question presented by Petitioner is not the claim that was resolved by the Vermont Court. That claim concerned a due process violation injuring Petitioner's reputation and a corresponding impingement of his right to freedom of association. That is categorically different from the issue for which Petitioner now seeks review: Violation of his right to free speech without due process of law. The Court's decision in *Adams v. Robertson*, 520 U.S. 83 (1997), precludes consideration by the Court of an issue not properly presented to or addressed by the Vermont Court. Since the issue presented in the petition was not properly presented to or addressed by the Vermont Court, the Petition for Writ of Certiorari should be denied.

The Vermont Court's brief (one paragraph) discussion of the relationship between Petitioner's failed Free Speech Claim and his Due Process/Association Claim does not cure the deficiency in the Petition because the jury determined that there had been no free speech violation. In addition to the absence of a free speech violation, the Vermont Court found that there has been no other deprivation of a federally protected right. The Decision correctly determined that Respondent is entitled to judgment as a matter of law.

III. The Petition Does Not Present An Issue Addressed By The Vermont Court.

This Court should deny the Petition because it does not present an issue addressed to, or decided by, the Vermont Court. Petitioner cannot seek review of an issue presented for the first time in his Petition. Such review is barred by *Adams v. Robertson*, 520 U.S. 83 (1997), wherein this Court

explained the applicable limitations of its review of state-court judgments.

> With "very rare exceptions," we have adhered to the rule in reviewing state-court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.

Id. at 86 (citations omitted). This rule is either jurisdictional or prudential. *Yee v. Escondido*, 503 U.S. 519, 533 (1992). Under either construction, the Court should decline to review the Decision.

Although it is difficult to discern Petitioner's precise argument, clearly he seeks revew of a federal claim which was neither presented to, nor addressed by, the Vermont Court. Based upon the Question Presented, however, it reads like his discredited Free Speech Claims. Petitioner requests this Court to determine:

> May a government body, without due process of law, intentionally and officially censure an elected member in retaliation for expressing his views at a public meeting?

Petitioner's Free Speech Claim was submitted to and rejected by the jury, with judgment entered for Respondent. That judgment was at first cross-appealed, but later dropped by Petitioner. Thus, this issue was not presented to the Vermont Court.

According to the Vermont Court, the issue it decided was whether there was sufficient evidence to support Petitioner's Due Process/Association Claim:

> In essence, the claim upon which the verdict was rendered, as evidenced by the jury instructions, was that the Prudential Committee damaged LaFlamme's reputation so severely "that his opportunity and ability to associate with others were significantly limited and that the damage resulted without due process of law." Defendants appeal on the ground that they were entitled to judgment as a matter of law.

App. 25. The Petitioner does not address the Due Process/Association Claim.

Petitioner argued that his failed Free Speech Claim provided the missing support for his Due Process/Association Claim, but the Vermont Court disagreed for the simple reason that the jury determined that Respondent had not violated Petitioner's right of free speech. App. 30. Where the deprivation required to support a due process claim is claimed to be a free speech violation, the absence of a violation is dispositive. *See Board of Regents v. Roth*, 408 U.S. 564, 575 (1972). Further, even if Petitioner had succeeded on his Free Speech Claim, his Due Process/ Association Claim would nevertheless still fail because he was not deprived of any other protected property or liberty interest. App. 29-34.

IV. Petitioner Has Not Asserted That He Has Been Deprived of a Federally Protected Property Right or Liberty Interest.

The Due Process/Association Claim on which the jury returned a verdict for Petitioner was based upon a supposed deprivation of his liberty interest in his reputation and right to free association:

> The plaintiff's third claim is that the defendant violated his Constitutional rights by depriving him of liberty without due process law.
>
> To prove this claim, the plaintiff must again show that number one, the defendant acted under color of state law, as explained earlier. Number two, that the defendant's conduct deprived plaintiff of his liberty without due process of law.
>
> Generally, one's reputation is not considered to be a property interest or a liberty interest deserving of due process protections. **However, if the defendant acts so as to injure plaintiff's reputation and the damage is so severe as to seriously limit plaintiff's opportunity and ability to associate with others, there may be a deprivation of the plaintiff's liberty.** In those instances, the plaintiff is entitled to due process of law.

App. 48. (emphasis added).

Unlike the claim submitted to the jury, Petitioner asserts here, as he did before the Vermont Court, that he has a

protected property or liberty interest in his office, in occupying and exercising his membership on the Committee and in running for future elected offices. Petition 5. As an elected official, **and not as an employee of the School District**, Petitioner has no federally protected interest in his membership on the Committee. *Snowden v. Hughes*, 321 U.S. 1 (1944), *rehg. denied* 321 U.S. 804 (1944). The Court has stated unequivocally:

> More than forty years ago this Court determined that an unlawful denial by State action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. *Taylor and Marshall v. Bekum*, 178 U.S. 548, 20 S.Ct. 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion, *Cave v. State of Missouri ex rel. Newell*, 246 U.S. 650, 38 S.Ct. 334 as we reaffirm it now.

Snowden v. Hughes, 321 U.S. at p. 7 (emphasis added).

Therefore, Petitioner has no federally protected interest in his position, or in the performance of his duties, on the Committee. Petitioner cites several cases in support of his contention. But each case deals with an entirely different interest than that claimed by Petitioner, and each arises out of completely different circumstances. *See e.g. Board of Regents v. Roth*, 408 U.S. 564 (1972) (**Employee** untenured university professor had no liberty or property interest in continued employment absent charges against him resulting in stigma or inability to gain future employment); *Duckworth v. Ford*, 995 F.2d 858 (8th Cir. 1993) (defendant not entitled

to qualified immunity for retaliation against public **employee** for support of his competitor for a promotion); *Hyland v. Wonder*, 972 F.2d 1129 (9th Cir. 1989) (Hyland I) *cert. denied*, 508 U.S. 908 (1993) (Terminated government youth center **employee** and volunteer had protected property interest in his position); *Smart v. Board of Trustees*, 34 F.3d 432 (7th Cir. 1994) (Opining that defamation lawsuit could be an infringement on freedom of speech in decision denying a preliminary injunction against a university funding suit against unsuccessful applicant for employment that waged publicity campaign against university employees for failure to hire him.); *Little v. City of North Miami*, 805 F.2d 962 (11th Cir. 1986) (**business reputation** and goodwill are a protected interests); *Anderson v. McCotter*, 100 F.3d 723 (10th Cir. 1996) (restrictions on free speech is permissible where necessary to prevent the disruption of governmental functions); *Elrod v. Burns*, 427 U.S. 347 (1976) (loss of public **employment** due to political affiliation violates First and Fourteenth Amendments).

Petitioner does not explain how these cases support his Petition. Nothing in these cases, however, identifies a protected interest of which he claims to have been deprived. Absent a recognized protected interest, the Decision of the Vermont Court reversing the judgment on the Due Process/Association Claim is correct, and should not be subject to review.

V. Conclusion.

Petitioner has not sought review of the Due Process/ Association Claim decided by the Vermont Court. He has failed to identify either in the record or in the applicable law a federally protected right of which he has been deprived. Accordingly, for all the reasons set forth in this Brief, the Petition should be denied.

Respectfully submitted,

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(3)

No. 00-0173

Supreme Court, U.S.
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In The

Supreme Court of the United States

STANLEY LAFLAMME,

Petitioner,

v.

ESSEX JUNCTION SCHOOL DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Vermont

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

The Petitioner was censured for speaking out on public issues without notice and opportunity to be heard. The issue raised by the request for writ of certiorari is whether Petitioner was entitled to due process of law.

I. Alleged Supreme Court Rule 15.2 Misstatements of Fact.

The Defendant alleges that Petitioner made two misstatements of fact in the Petition.

> 1. " 'The Defendant issued an official governmental censure without due process in retaliation for [P]etitioner's speaking out on public issues . . . ' Petition 12."

Opposition, p. 3. The Defendant points to the Censure Motion, and argues "[o]nly one of those reasons was related to Petitioners' comments." *Id.*

The Defendant quotes its board chair in saying that the Petitioner's public remarks at the May 23rd Village Trustee meeting were "the last straw." Opposition, pp. 3-4, n. 2. Hence, by Petitioner's own admission here, the Petitioner's protected public speech at the Village Trustee meeting was a motivating factor in the censure.

Moreover, the censure resolution itself specifically points to the Petitioner's attendance and statements as the cause, beginning "[a]fter viewing the tape of the Village Trustees meeting of May 23, the consensus of the members present . . . was to protect the public's interest by censuring" the Petitioner. The censure goes on to recite four specific instances of the Petitioner's political

speech as the subject of the censure.[1] Appendix p. 21. The fact that the censure was approved just based on viewing a tape of the Petitioner at the Trustees' meeting is noted in the Committee minutes. Appendix pp. 39-43. Other claims of misconduct were added later.[2]

---

[1] 2. . . . "Mr. LaFlamme spoke publicly against the board-approved draft budget. He also supported the village trustees in opposing the Union High School at their May 23 meeting despite the unanimous vote of the Prudential Committee to support the Union." 3. . . . "Mr. LaFlamme has made public unsubstantiated allegations. . . . " 4. . . . "Mr. LaFlamme corroborated the inaccurate data presented at the trustees meeting, and his statements about teacher job security were not factual." 5. . . . "Mr. LaFlamme invited the trustees to make their presentation at the Prudential Committee hearing. . . . " Appendix, p. 22-23.

[2] Testimony of Board Secretary Soule, Transcript September 3, 1995, p. 128 l. 22 – p. 129, l. 7, p. 129 l. 13 – p. 130 l. 4:

> Q And at that meeting, the Trustees – the Prudential Committee watched the tape of the Trustees meeting?
>
> A Yes.
>
> Q Okay. And after that the trust – the Prudential Committee decided to censure Mr. Laflamme [sic]?
>
> A After we watched the tape?
>
> Q Yes.
>
> A Is that the question? We – we had a discussion that there would be a censure if legal counsel was in approval.
>
> * * *
>
> Q And you also decided at that meeting to contact other members of the Prudential Committee to get other policies or anything that you felt should be included in the censure, isn't that correct?

The second alleged misstatement is claimed as follows:

> 2. "At trial, the Defendant made no objection to the substance of the trial court's instructions to the jury." Petition 10.

Opposition at p. 3. While Defendant opposed *any* due process instruction, Defendant made no objection to the *substance* of the due process instructions given.[3] The

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> A As part of the discussion, all the other members of the Prudential Committee was – were there that night.
>
> Q Right.
>
> A And as part of the discussion, we were requested to give material to Miss Mooney.
>
> Q Okay. And you were to get Miss Mooney any policies or anything that people felt should be included in the censure, correct?
>
> A Correct.

[3] The Defendant's only preserved objection to the due process charge was as follows:

> Next, we object on that same page to the charge, the plaintiff's third (unclear), for violation of his Constitutional rights by depriving him of liberty without due process of law. Should not have been charged to the jury. We don't believe that we were properly noticed and did not consider it an action or claim that plaintiff was bringing. It had not been raised in this action at any time before the Judge mentioned it in chambers after hearing a portion of the evidence by plaintiff's counsel or at any other time. It appears only in one phrase in or (unclear) in the complaint, paragraph 18, specifically, which plaintiff has identified.

Transcript, Attorney Thomas Higgins, September 4, 1997, p. 318, ll. 14-25.

instructions are therefore taken as a correct statement of law,[4] and the verdict sustained if supported by the evidence. Though Defendant made an initial, vague objection, Defendant did not renew its objection, nor request a limiting instruction on the evidence. *Compare,* Vt. R. Evid. 103, 105.

Absent an objection to the substance of the jury instructions, a court must determine on all the evidence whether "there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." *Reeves v. Sanderson Plumbing Prod.*, ___ U.S. ___, 120 S. Ct. 2097, 2109, 147 L. Ed. 2d 105, 121 (2000), *quoting* Fed. R. Civ. P. 50(a); *accord, Claude G. Dern Elec. v. Bernstein,* 144 Vt. 423, 426, 479 A.2d 136, 138 (1984). The explicit motivation to punish the Petitioner for his political speech provides a legally sufficient basis for a right to due process. That motivation appears even on the surface of the censure and is admitted here by Defendant.

It is the controlling law of this case that the trial court correctly set out the elements of due process as acting under color of law, the Defendant deprived the Petitioner of liberty without due process of law. Appendix. pp. 47-48.

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[4] Vt. R. Civ. P. 51(b); *Wood v. Wood,* 166 Vt. 608, 608-609, 693 A.2d 673 (1997). Where there was no objection to the substance of the court's instructions, the Court's charge to the jury becomes the controlling law of the case. *Lemnah v. American Breeders Serv.*, 144 Vt. 568, 573-74, 482 A.2d 700 (1984); *Jackson v. Rogers,* 120 Vt. 138, 144, 134 A.2d 620, 623 (1957); see *Lent v. Huntoon,* 143 Vt. 539, 554, 470 A.2d 1162, 1172 (1983).

II. The Claim that the Petition Does Not Present an Issue Addressed by the Vermont Supreme Court

Defendant's underlying claim is that the Petitioner seeks review for impingement of his right of free speech that was not properly presented to or addressed by the Vermont Supreme Court. The Petitioner concedes that the Vermont Supreme Court did address the Petitioner's claim, albeit in what Defendant describes as "one paragraph." Opposition, p. 7. In fact the Court addressed the issue directly and in some detail, ruling that the Petitioner's failure to prevail on his claim of prior restraint prevented him from arguing retaliation in the due process claim. Appendix pp. 30-31.

In the Vermont Supreme Court, the Petitioner extensively briefed the standard of review, the evidentiary basis, and the "stigma plus" analysis that "the censure was motivated by an effort both to punish free speech and in an effort to stifle future free association and speech, the conduct is actionable even for a volunteer position"[5], the last issue consuming pages 18-25 of its brief. The Petitioner also filed a Motion to Reargue on the grounds that the Vermont Supreme Court had denied the Petitioner the right to trial by jury in treating the adverse verdict on the prior restraint issue as dispositive of the motive for the censure on the due process claim. The Petitioner has always presented this case as a retaliation case, and specifically argued at trial the "stigma plus

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[5] Petitioner's Brief before the Vermont Supreme Court, pp. 18-19.

analysis" of *Little v. City of Miami*,[6] which is a case directly on point to the facts here.

Since the Petitioner fully presented the issue to the Vermont Supreme Court, and the Vermont Supreme Court explicitly ruled, the Petitioner has complied with both of the alternate standards of *Adams v. Robertson*, 520 U.S. 83, 86, 117 S. Ct. 1028, 1029, 137 L. Ed. 2d 203 (1997).

III. Petitioner Has Asserted that He Has Been Deprived of a Federally Protected Property Right or Liberty Interest

The Defendant also argues that no federal rights are implicated, because the Petitioner has no protected liberty or property interest in his office, relying on *Snowden v. Hughes*, 321 U.S. 1, 7 (1944), *rehearing denied*, 321 U.S. 804 (1944). The *Snowden* Court ruled that misapplication of a facially neutral state statute to a candidate for public office, with nothing more, did not violate the Fourteenth Amendment. The Court took pains to note that no other constitutional violation or discrimination was alleged.

Snowden involved no implication of First Amendment or other activity protected by the Bill of Rights through the Fourteenth Amendment. The rights of Free Speech and Free Assembly apply to the states through the Fourteenth Amendment. *See, e.g. Fisk v. Kansas*, 274 U.S. 380, 387 (1927); *DeJonge v. Oregon*, 299 U.S. 353, 364 (1937). Where First Amendment rights are implicated as to state officers, state officials are subject to an action under the

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[6] *Little v. City of North Miami*, 805 F.2d 962, 967-968 (11th Cir. 1986); Transcript, September 4, 1997, argument of Edwin Hobson in chambers.

Fourteenth Amendment by candidates or even voluntary state employees. *Hadnot v. Amos*, 394 U.S. 358, 364, 89 S. Ct. 1101, 1104, 22 L. Ed. 2d 336 (1969); *Elrod v. Burns*, 427 U.S. 347 (1976) (patronage employees not protected against dismissal are protected when dismissed for exercise of First Amendment rights); *Hyland v. Wonder*, 972 F.2d 1129, 1135 (9th Cir. 1992) *cert. denied*, 508 U.S. 908 (volunteer protected against dismissal for exercise of First Amendment rights).

Punishing an elected school board member for speaking out publicly on school board matters is repugnant to the First and Fourteenth Amendments. "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75, 85 S. Ct. 209, 216, 13 L. Ed. 2d 125 (1964).

CONCLUSION

This case presents the question of whether an elected member of a governmental body can be subject to official discipline without due process of law because he spoke out on public issues. As the Courts of Appeal and the Vermont Supreme Court have reached different answers to this important question of due process, this Court should grant this Petition for Writ of Certiorari.

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